

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

C.S. and D.S.,

Plaintiffs,

v.

DEPARTMENT OF SOCIAL AND
HEALTH SERVICES (DSHS), JOHN
DOE SUPERVISOR, JOHN DOE
DIRECTOR, AND SUNRISE
COMMUNITY FACILITY,

Defendants.

NO. CV-08-5699 RBL

STIPULATED PROTECTIVE
ORDER

COME NOW the parties, by and through their respective counsel, Noah C. Davis, attorney for Plaintiffs, and Robert M. McKenna, Attorney General, and John K. McIlhenny, Jr., Assistant Attorney General, attorneys for Defendant Department of Social and Health Services, and hereby stipulate and agree to the entry of this Protective Order pursuant to Fed. R. Civ. P. 26(c) and FRE 501. The Department of Social and Health Services asserts that RCW 13.50.100, RCW 13.34.110, RCW 26.33.330, RCW 26.33.340, and RCW 26.44.030(9) establish that the Department of Social and Health Services records and files and information therein are confidential and privileged. Plaintiffs further acknowledge that not all documents listed below are in the possession, custody, or control of the Department of Social and Health Services and that the

1 State of Washington and Department of Social and Health Services may not be expected to
2 produce documents which are not in their ordinary and official possession, custody, or control
3 (unless the Federal Rules require).

4 This protective order shall apply to the following documents and/or files, or any parts
5 thereof, provided by Defendant Department of Social and Health Services to Plaintiffs:

6 1. Department of Social and Health Services (DSHS), Juvenile Rehabilitation
7 Administration (JRA) files relating to C.S.;

8 2. DSHS Division of Licensed Resources (DLR), Child Protective Services (CPS)
9 files relating to C.S.;

10 3. Personal, identifying information for current or former Washington State
11 employees.

12 IT IS HEREBY STIPULATED that the contents and/or existence of the aforementioned
13 documents and files and any part thereof or therein shall not be disclosed in any manner or form
14 to any person and/or entities other than the parties, their attorneys, their staff, experts retained by
15 the parties' attorney(s), their staff, and individuals otherwise entitled to obtain said information
16 pursuant to statutory exemptions from confidentiality and other individuals as herein provided.

17 IT IS FURTHER STIPULATED that the parties shall be allowed to use the
18 aforementioned documents or information in depositions of plaintiffs, defendants, medical
19 doctors, psychologists, nurses, counselors, health care providers, and other persons named or
20 identified in any of the aforementioned documents or in consulting with any expert witnesses in
21 this case, subject to the conditions set forth in this Protective Order.

22 IT IS FURTHER STIPULATED that the files and records may be released to any
23 mediator selected to mediate this matter; subject to the conditions set forth in this protective order.

24 IT IS FURTHER STIPULATED that counsel for the parties shall use all documents and
25 information produced or disclosed pursuant to this Protective Order solely for the purpose of
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1 preparation for and trial of this action. Under no circumstances shall information or materials
2 covered by this Order be disclosed to anyone other than as provided in this Order.

3 IT IS FURTHER STIPULATED that not later than thirty (30) days after the conclusion of
4 the proceedings in this action, including any appeal, all documents and information subject to this
5 order, including any copies or summaries thereof, or documents containing information taken
6 therefrom, shall be returned to counsel for the party producing such documents or destroyed by
7 the party having such documents. A copy of this Order shall accompany any copy of the
8 discovery records or information protected by this Order and released to anyone. No attorney or
9 expert shall disclose any information gained or derived from the aforementioned records to
10 anyone without further order of the court unless the person to whom the information is disclosed
11 is otherwise entitled to obtain said information pursuant to this Protective Order or to statutory
12 exemptions from confidentiality.

13 IT IS FURTHER STIPULATED that any person furnishing documents relating to items
14 1, 2, and 3 listed on page 2 of this order shall first be provided with a copy of this stipulation.

15 IT IS FURTHER STIPULATED that in any part of a deposition or other hearing or
16 proceeding in which information from the designated files and documents is to be discussed, any
17 party asserting confidentiality may exclude from the room any person who is not entitled to be
18 shown such information.

19 IT IS FURTHER STIPULATED that any court reporter or transcriber who reports or
20 transcribes testimony in this action at a deposition, hearing or proceeding shall first agree that all
21 testimony and information relating to the documents listed at page 2 of this order, items 1, 2, and
22 3, is and shall remain confidential and shall not be disclosed by such reporter or transcriber except
23 to the attorneys for any party, any other person who is present while such testimony is being
24 given, or the Court. The reporter or transcriber shall further agree that copies of any transcript,
25 reporter's notes or any other transcription records regarding any documentation listed at page 2 of
26 this order, items 1, 2, and 3, will be retained in absolute confidentiality and safekeeping by such

1 reporter or will be delivered to the undersigned attorneys or filed with the court. Each such court
2 reporter or transcriber will sign a copy of the Confidentiality Agreement.

3 IT IS FURTHER STIPULATED that nothing in this stipulation shall preclude any party
4 from applying to the Court for additional or different protective provision, or to rescind protective
5 provisions, in respect to specific documents or information or individuals if the need should arise
6 during the litigation.

7 IT IS FURTHER STIPULATED that neither the taking nor the failure to take any action
8 to enforce the provisions of this Protective Order, nor the failure to object to any such action or
9 omission, shall constitute a waiver of any claim or defense in the trial of this action or any other
10 action. The procedures set forth herein shall not affect the rights of the parties to object to
11 discovery on grounds other than those related to confidentiality, or to move to compel discovery,
12 nor shall it relieve a party of the necessity to respond properly to discovery requests.

13 IT IS FURTHER STIPULATED that neither the entry of this order nor the designation of
14 any information as protected under this Protective Order shall be admissible evidence during the
15 pendency of this action. The fact that information is disclosed, used or produced in discovery or
16 trial herein shall not be construed, offered or admitted in any action or proceeding before any
17 court, agency, or tribunal as evidence of or concerning whether or not such information is
18 confidential or proprietary.

19 IT IS FURTHER STIPULATED that this Protective Order shall remain in full force and
20 effect until such time as this Court modifies its terms or releases the parties from its provisions.

21 DATED this 13th day of February, 2009.

22 ROBERT M. MCKENNA
23 Attorney General

IN PACTA, PLLC

24 /s/ John K. McIlhenny
JOHN K. McILHENNY, JR.
25 WSB #32195
Assistant Attorneys General
26 Attorneys for State Defendants

/s/ Noah C. Davis
NOAH C. DAVIS
WSB #30939
Attorneys for Plaintiffs
(Per email authorization, 2/13/09, 1:34 pm)

1 ORDER

2 Pursuant to the foregoing Stipulation between parties, it is hereby

3 ORDERED that the foregoing Stipulated Protective Order is entered and in full force and
4 effect until such time as this Court modifies its terms or releases the parties from its provisions.

5 DONE IN OPEN COURT this 23rd day of February, 2009.

6 
7 RONALD B. LEIGHTON
8 UNITED STATES DISTRICT JUDGE

9 Presented by:

10 ROBERT MCKENNA
11 Attorney General

12 /s/ John K. McIlhenny
13 JOHN K. McILHENNY, JR.
14 WSB #32195
15 Assistant Attorneys General
16 Attorneys for State Defendants

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18 IN PACTA, PLLC

19 /s/ Noah C. Davis
20 NOAH C. DAVIS, WSBA#30939
21 Attorney for Plaintiffs
22 (Per email authorization, 2-13-09; 1:34 pm)
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